

Exhibit D

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789

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5 In the Matter of:

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7 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Proc. 10-04889-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 THE ESTATE OF ROBERT SHERVYN, et al.,

18 Defendants.

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<p>1 Adv. Proc. 12-01565-smb 2 ----- x 3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L. 4 MADOFF INVESTMENT SECURITIES LLC, 5 Plaintiff, 6 v. 7 STANDARD CHARTERED FINANCIAL SERVICES, 8 Defendants. 9 ----- x 10 Adv. Proc. 10-04752-smb 11 ----- x 12 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L. 13 MADOFF INVESTMENT SECURITIES LLC, 14 Plaintiff, 15 v. 16 KUNTZMAN FAMILY LLC, ET AL., 17 Defendants. 18 ----- x 19 United States Bankruptcy Court 20 One Bowling Green 21 New York, NY 10004 22 23 December 16, 2020 24 9:59 AM 25</p>	<p>1 HEARING re Adversary proceeding: 10-04889-smb Irving H. 2 Picard, Trustee for the Liquidation of Bernard L. Madoff 3 Investment Securities LLC v. The Estate of Robert Shervyn 4 Savin, et al. Status Conference re Mediations 5 6 HEARING re Adversary proceeding: 12-01565-smb Irving H. 7 Picard, Trustee for the Liquidation of Bernard L. Madoff 8 Investment Securities LLC v. Standard Chartered Financial 9 Motion to Stay 10 11 HEARING re Adversary proceeding: 10-04752-smb Irving H. 12 Picard, Trustee for the Liquidation of Bernard L. Madoff 13 Investment Securities LLC v. Kuntzman Family LLC, et al. 14 Motion to Withdraw as Counsel 15 16 17 18 19 20 21 22 23 24 25 Transcribed by: Sonya Ledanski Hyde</p>
Page 3	Page 5
<p>1 B E F O R E : 2 HON STUART M. BERNSTEIN 3 U.S. BANKRUPTCY JUDGE 4 5 ECRO: UNKNOWN 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 A P P E A R A N C E S : 2 3 BAKER HOSTETLER LLP 4 Attorney for Irving Picard, Trustee 5 45 Rockefeller Plaza 6 New York, NY 10111 7 8 BY: NICHOLAS J. CREMONA (TELEPHONICALLY) 9 ROBERTSON BECKERLEGGE (TELEPHONICALLY) 10 11 CHAITMAN LLP 12 Attorney for Kuntzman, et al. 13 465 Park Avenue 14 New York, NY 10022 15 16 BY: HELEN CHAITMAN (TELEPHONICALLY) 17 18 SULLIVAN & CROMWELL LLP 19 Attorney for Standard Charter 20 465 Park Avenue 21 New York, NY 10022 22 23 BY: ANDREW FINN (TELEPHONICALLY) 24 25</p>

<p style="text-align: right;">Page 6</p> <p>1 ALSO PRESENT TELEPHONICALLY: 2 3 KEVIN BELL 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 proceedings where Chaitman LLP serves as defendant's 2 counsel. At that time, there were approximately 60 pending 3 cases. The parties agreed to prioritize the cases and 4 proceed to mediation before Judge Hurkin-Torres to the 5 extent that his schedule permitted. Your Honor so ordered 6 that hearing transcript to reflect those agreed-upon 7 procedures and the parties began mediating the cases 8 starting in June. 9 As of today, Your Honor, we have conducted 10 numerous mediations with the defendants and engaged in 11 several attorney-only sessions with Judge Hurkin-Torres. As 12 I know Your Honor is aware based on your approval of 13 numerous dismissal stipulations, overall this has been a 14 very successful process. 15 As of today, the parties with the assistance of 16 Judge Hurkin-Torres have reached settlements in 17 approximately 30 cases. We have had only one failed 18 medication in the Carol Kamenstein case which is adversary 19 proceeding number 10-4469. And in that case, Your Honor 20 entered a pre-trial scheduling order with a final pre-trial 21 conference currently scheduled for January 27, 2021 before 22 Chief Judge Morris. 23 However, despite all of this progress, Your Honor, 24 it seems unfortunately that we may have reached the end of 25 the road, as the parties seem to be at an impasse as to how</p>
<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS 2 THE COURT: This is Judge Bernstein. Casey, would 3 you start the recorder, please? 4 CLERK: The recorder has been started. 5 THE COURT: Thank you. I want to remind the 6 speakers to state their names before they speak. Don't use 7 speakerphones. Mute your phones if you matter is not being 8 heard and turn off any extraneous electronic devices which 9 may interfere with the transmission. 10 I'll begin with Madoff. 11 MR. CREMONA: Nicholas Cremona of Baker & 12 Hostetler appearing on behalf of Irving Picard as SIPA 13 Trustee. We have three matters -- 14 THE COURT: Good morning. 15 MR. CREAMONA: -- scheduled for hearing today. We 16 propose proceeding in the order of the hearing agenda filed 17 with the Court, but we're happy to proceed however Your 18 Honor prefers. 19 THE COURT: No, go ahead. That's fine. 20 MR. CREMONA: Okay. The first item we have on the 21 calendar, Your Honor, is the status conference on the 22 mediations with the Chaitman, LLP firm. As Your Honor may 23 recall, we were before the Court earlier this year on May 24 28th and discussed the agreed-up protocols that the parties 25 established to conduct mediations in the remaining adversary</p>	<p style="text-align: right;">Page 9</p> <p>1 to proceed. Based on discussions with Judge Hurkin-Torres 2 through last night, it is the Trustee's understanding that 3 Ms. Chaitman is unwilling to schedule any additional 4 mediations in the remaining cases until some time after the 5 trial and the Kamenstein case is fully concluded. 6 As I mentioned, that case is scheduled for final 7 pre-trial conference in January and the trial is unlikely to 8 be fully completed until next year. As we explained through 9 the mediator, it is the Trustee's position that the cases 10 should not remain stagnant for a period of several months 11 given that we just passed the 10th anniversary of the filing 12 of the complaints in all of these actions. 13 Moreover, the parties agreed and this Court so 14 ordered the parties to adhere to this agreed-upon mediation 15 process and the corresponding time-table. If we were to 16 take Ms. Chaitman's proposed approach, we would have the 17 procedural posture of one case dictating the pace of all of 18 her remaining cases, which Your Honor has indicated would 19 not be appropriate. 20 Rather, it is the Trustee's position that given 21 the clear law of the case in these proceedings, we should 22 continue the mediation process and try to resolve these 23 cases as expeditiously as possible for the benefit of the 24 net loser victims. 25 THE COURT: Thank you.</p>

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<p>1 MS. CHAITMAN: Good morning, Your Honor. This is 2 Helen Chaitman. I'd like to respond to Mr. Cremona's 3 statements. 4 The mediation process has been very successful. 5 We have settled 31 cases and I would like to continue the 6 mediation. However, as Your Honor knows, I have a very 7 small firm. I have two of my paralegals on whom I rely for 8 trial preparation. One is in the hospital now having 9 surgery. The other just got out yesterday. And given the 10 massive amount of work necessary to prepare the Kamenstein 11 case for trial, I explained to the mediator that I want to 12 proceed with my remaining cases, but I can't -- I don't have 13 the time to do that and also meet the requirements for the 14 pretrial preparation that has been set in place by Judge 15 Morris. 16 I asked the Trustee to consent to adjourn the 17 Kamenstein trial until we complete the mediations and he 18 refused to do that, so that's the reason. I had applied to 19 Judge Morris to adjourn the Kamenstein trial and that motion 20 was denied. 21 So, it's simply a process, Your Honor, of my being 22 incapable of doing two things at the same time, and I don't 23 understand why the Trustee would object to adjourning the 24 Kamenstein trial for a few months so that we can complete 25 the mediations.</p>	<p>1 seems to me at a minimum you can schedule mediations up to 2 the date of the pre-trial conference, which is January 27th, 3 and revisit the issue with Judge Morris if there's some 4 progress. 5 But you know, as Mr. Bell argues, you can't put 6 this off for years, because in that event I know I would 7 start trying the cases if you didn't want to mediate them, 8 and I guess Judge Morris will and you'd probably be in a 9 worse situation because you'd have a lot more work. 10 MS. CHAITMAN: But Your Honor, it's not -- it's 11 not a question of years. First of all, from 2010 when the 12 complaints were filed until now, the delays have primarily 13 been at the Trustee's option, and the -- 14 THE COURT: I understand. There have been a lot 15 of delays in this case for a lot of reasons and there's been 16 a lot of motion practice before me and before the district 17 court. There's been several appeals. I'm not blaming you 18 or any of the defendants for delays in these cases. 19 You had the right to move for withdrawal of the 20 reference. You did. And some issues you won and some 21 issues you lost. I understand that, and I also understand 22 that, you know, many of the net losers have received their 23 full amount of compensation. And I understand all these 24 things, but what I'm concerned about is just pushing these 25 issues off indefinitely into the future pending, you know,</p>
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<p>1 We have 27 medications left. That's about -- you 2 know, we're doing one or two a week, so it's a couple of 3 months. I don't understand why the Trustee can't consent to 4 the adjournment of the Kamenstein trial to allow us to 5 complete the mediations. 6 MR. BELL: Your Honor, Kevin Bell for SIPC. 7 THE COURT: Go ahead, Mr. Bell. 8 MR. BELL: Today is day 4,400 of this liquidation 9 proceeding. Last Friday we began the 13th year of this 10 proceeding. These complaints have been live for over 3,700 11 days. Last Friday Judge Morris in Mann following your 12 ruling -- your decision in Nelson reiterated again that this 13 is two-year absolute strict liability, something you said on 14 February 14, 2014. We have net losers who don't have their 15 money for these number of years, and we can't even get a 16 commitment for the eight Thursdays in January or February 17 what mediations we would set with Ms. Chaitman to set them 18 up so that we could move forward, you know? 19 It is an -- unfair to the net losers to kick it 20 out another four, six, eight months depending whether 21 Kamenstein decision goes against Ms. Chaitman, she appeals, 22 and then she appeals again. We may be three years before we 23 get to anything further. And Judge Morris clearly rejected 24 any extension. 25 THE COURT: Uh-huh. You know, Ms. Chaitman it</p>	<p>1 the resolution of the Kamenstein case, whether it's the 2 bankruptcy court, district court, or circuit level. Things 3 can't stop, so I guess the bottom line is your choice. I 4 mean, I can't speak for Judge Morris, but your choice is 5 either going to be to mediate these cases or try them. 6 MS. CHAITMAN: Well, I'm perfectly willing to 7 mediate the remaining cases. It was the Trustee that 8 terminated the Kamenstein mediation in the middle without 9 any basis, in my opinion, but the point is I can move -- 10 THE COURT: Well, do you think it's worth -- do 11 you think it's worthwhile -- let me just ask you, do you 12 think it's worthwhile -- I don't want to get into who said 13 what to whom at the mediation obviously or the particular of 14 the mediation, but you know, if you think it's worthwhile to 15 continue the mediation with Kamenstein, that's fine, you can 16 discuss that with the Trustee. If the two sides are so far 17 apart that any continuation of the mediation is just a waste 18 of time, move on to the next case and try Kamenstein. 19 MS. CHAITMAN: Well, the problem is that the pre- 20 trial preparation for the Kamenstein trial, particularly in 21 the month of December, is absolutely massive and I do not -- 22 the mediations take an enormous amount of my time, and I do 23 not -- I cannot do both things at the same time. That's 24 basically what it comes down to. 25 MR. BELL: Your Honor, Kevin Bell at SIPC.</p>

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<p>1 THE COURT: All right. So, let me ask you a 2 question -- a practical question, Mr. Cremona and Mr. Bell. 3 If she doesn't want to go through or continue with the 4 mediations regardless of the order I entered, what's the 5 alternative?</p> <p>6 MR. CREMONA: Your Honor, it's --</p> <p>7 MR. BELL: Well, Your Honor, Kevin --</p> <p>8 MR. CREMONA: -- it's --</p> <p>9 MR. BELL: -- Kevin Bell. Your Honor --</p> <p>10 THE COURT: Yeah.</p> <p>11 MR. BELL: -- we have a number of cases we've 12 proffered to the mediator. We also suggested the eight 13 Thursdays in January and February even as recent as 8:00 14 last night to start to put some of the remaining cases Ms. 15 Chaitman just said were 27 on the calendar so that we can 16 hopefully have some progress. This Kamenstein 17 recommendation by Ms. Chaitman that we go back to mediation 18 is something new.</p> <p>19 If we -- let's assume for argument's sake we have 20 a hearing before Your Honor on January 20th on the 21 allocation motion where we're going to distribute to 22 customers and get them below -- not fully paid. We'll 23 reduce them to under 1,000 who haven't been satisfied, the 24 net losers.</p> <p>25 So, if we could see some movement -- and we're in</p>	<p>1 decision.</p> <p>2 THE COURT: All right. Mr. Bell, I'm not sure 3 that answered the question that I posed but let 4 (indiscernible).</p> <p>5 MR. BELL: Well, Mr. Cremona will clarify, yeah.</p> <p>6 THE COURT: All right. Well, let me ask Ms. 7 Chaitman if she's willing to proceed with a -- set the 8 mediations. Obviously if you're on trial you can't -- you 9 can't mediate a try a case on the same day but set the 10 mediations and go forward and we'll take another look at it 11 on January 20th.</p> <p>12 MS. CHAITMAN: I can -- I can schedule mediations 13 in January, but I have no idea whether Judge Morris intends 14 to have the trial in February, in which event of course I 15 wouldn't be available, and --</p> <p>16 THE COURT: But you can deal with that with Judge 17 Morris it seems to me. Just because it's a final pre-trial 18 conference -- is it a final pre-trial conference on January 19 27th?</p> <p>20 MS. CHAITMAN: Yes.</p> <p>21 MR. CREMONA: Yes, Your Honor.</p> <p>22 THE COURT: All right. But that doesn't -- you 23 know, the trial may be two months after that. You don't get 24 the trial the next day generally.</p> <p>25 MS. CHAITMAN: Okay. Well, the Kamensteins have</p>
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<p>1 the holiday season, so I don't expect anything more to 2 happen. There are no mediations scheduled between now and 3 whenever. So, we can come back on the 20th. We can go back 4 and talk to Judge Hurkin-Torres today or tomorrow. Ms. 5 Chaitman can proffer cases to put in the eight Thursdays of 6 January and February and we can come back to Your Honor on 7 the 20th and say we did the holiday spirit, we got something 8 done, we're moving forward. Ms. Chaitman wants to pull 9 Kamenstein, you know, we can talk about that, but that was 10 something new.</p> <p>11 THE COURT: Uh-huh. So, what is your proposal?</p> <p>12 MR. BELL: I think, Your Honor, what we would say 13 is let's re -- let's set a hearing, continue this discussion 14 on the 20th. You direct Ms. Chaitman to fill in the blanks 15 for those eight Thursdays in January and February with 16 particular cases working with the mediator. If we have 17 items scheduled, and we'll have two done hopefully before 18 the 20th, so we will have some progress, and we come back to 19 Your Honor at that point in time.</p> <p>20 If we don't have a schedule and we don't have any 21 cases resolved, you know, we'll be -- we'll be at day 4,435 22 that this case has been going on and these defendants have 23 known there have been fictitious profits in their 24 possession, and you know, there are consequences to them 25 that Judge Morris laid out clearly on Friday in the Mann</p>	<p>1 retained bankruptcy counsel and I understand that the 2 bankruptcy attorney has reached out to Baker and Hostetler, 3 and I would propose that we set the Kamenstein mediation 4 with the bankruptcy counsel participating as the first one 5 that we do in January, because obviously if we can resolve 6 Kamenstein, then the trial goes away and it frees up my 7 schedule.</p> <p>8 THE COURT: Well, that certainly makes sense. 9 Who's the bankruptcy counsel?</p> <p>10 MS. CHAITMAN: It's someone from Florida where the 11 Kamensteins live. His name is Robert Furr, F-U-R-R.</p> <p>12 THE COURT: Uh-huh.</p> <p>13 MR. BELL: Your Honor --</p> <p>14 THE COURT: Well, when is -- when is he ready to 15 continue the Kamenstein mediation?</p> <p>16 MS. CHAITMAN: I would suggest that we do that --</p> <p>17 THE COURT: You know, he --</p> <p>18 MS. CHAITMAN: -- in the first week in January.</p> <p>19 THE COURT: Because I don't want to hear that he 20 needs, you know, a half a year to get his arms around this 21 case.</p> <p>22 MS. CHAITMAN: No, no, no.</p> <p>23 MR. BELL: That date -- that date is January 7th, 24 Your Honor.</p> <p>25 THE COURT: All right. So, you reschedule the</p>

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<p>1 Kamenstein mediation for January 7th and schedule mediations 2 -- you're doing the 7th, the 14th, and the 21st? Are those 3 the dates you were talking about, Mr. Bell? 4 MR. BELL: And the 28th. And February -- 5 THE COURT: The 28th -- 6 MR. BELL: -- 4, 11 -- 7 THE COURT: All right. Why don't we do this? 8 Let's schedule Kamenstein first for January 7th. I think 9 that's the date you said. Continue to schedule them out and 10 we'll see what happens with the Kamenstein trial. Ms. 11 Chaitman is right. If it's resolved, then that's not an 12 issue. I don't know if you have other final pre-trial 13 conferences that day, but -- 14 MS. CHAITMAN: Not at the present time. 15 THE COURT: All right. Why don't we do that? Let 16 Mr. -- Furr did you say his name is? 17 MS. CHAITMAN: Yes, F-U-R-R. 18 THE COURT: Just let him know -- let him know that 19 January 7th is the date and he has to be prepared to attend, 20 I guess virtually, the mediations -- the mediation in 21 accordance with the rules. 22 MS. CHAITMAN: (Indiscernible). 23 THE COURT: Did you check -- 24 MR. CREMONA: Your Honor -- 25 THE COURT: -- his availability?</p>	<p>1 MS. CHAITMAN: That is correct. 2 THE COURT: So, once the pre-trial order is done, 3 if the trial is not the next day, you know, you're going to 4 have free time. 5 MS. CHAITMAN: Well, we have to assemble all the 6 exhibits. I mean, it's fairly massive, so. 7 THE COURT: Yeah. Yeah, but you know, you've 8 tried a few of these cases, Ms. Chaitman. I understand that 9 each case has some particularized facts, but you know, a lot 10 of the exhibits are the same. Did Judge Morris issue a 11 decision in Mann? 12 MR. CREMONA: Yeah. 13 MR. BELL: Yes, sir. Last Friday afternoon. 14 THE COURT: Would you send a copy to my chambers, 15 please? 16 MR. CREMONA: Absolutely, Your Honor. 17 THE COURT: Thank you. All right. So, I will 18 adjourn this to January 20th then at 10:00. 19 MR. CREMONA: Thank you, Your Honor. The next -- 20 THE COURT: All right. Go ahead, Mr. Cremona. 21 MR. CREMONA: -- the next item on the agenda is 22 Ms. Chaitman's application to withdraw in the Kuntzman, LLC 23 matter. 24 THE COURT: Okay. You know, I've looked at the 25 papers. It appears -- let me ask Ms. Chaitman. Aside from</p>
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<p>1 MS. CHAITMAN: I haven't checked his availability, 2 but since it's done on Zoom, I don't imagine it would be a 3 difficulty. 4 THE COURT: All right. That's true. Yes, Mr. 5 Cremona? 6 MR. CREMONA: Your Honor, I was simply going to 7 say we're happy to proceed in that fashion, and we will 8 coordinate with Judge Hurkin-Torres to schedule that for 9 January 7th and see where we are at that point. 10 THE COURT: Okay. But I also want to schedule the 11 remaining mediations, and you know, depending on what 12 happens with the trial, you'll either be able to keep that 13 schedule or not. But putting them off -- 14 MR. CREMONA: We -- 15 THE COURT: -- Ms. Chaitman, putting them off 16 indefinitely pending the conclusion of the Kamenstein trial 17 is just -- that's a non-starter. 18 MS. CHAITMAN: Okay. I wasn't -- I wasn't -- 19 THE COURT: Has a final pre-trial order been 20 submitted in Kamenstein? 21 MR. CREMONA: Your Honor, this is Nicholas Cremona 22 again. We have exchanged the draft of the pre-trial order 23 as required by your scheduling order, and we are due to 24 receive comments from Ms. Chaitman I believe tomorrow. 25 THE COURT: Okay.</p>	<p>1 the Gattegno and the Greens, are there any other members of 2 this LLC? 3 MS. CHAITMAN: I don't believe so, Your Honor. I 4 don't have it in front of me, but I don't believe so. Ms. 5 Gattegno is on the phone, as you had requested. 6 THE COURT: Okay. Ms. Gattegno, are you on the 7 phone? I didn't see her on -- 8 MS. CHAITMAN: Oh, wow. Should I add her now? 9 Because I had her on the phone when I called in. She must 10 have fallen off. 11 THE COURT: Yes. Yeah. Let's -- 12 MS. CHAITMAN: Just give me one second. 13 THE COURT: Before you get her on the phone, it's 14 starting to sound like none of the members are wanting to 15 take responsibility for managing this LLC. 16 MS. CHAITMAN: I'm going to try to get her on 17 right now, okay? 18 THE COURT: All right. 19 (Pause) 20 MS. CHAITMAN: Ms. Gattegno, are you on? 21 MS. GATTEGNO: Yes, I am. 22 MS. CHAITMAN: Oh, okay. She inadvertently fell 23 off. 24 THE COURT: Ms. Gattegno, this is Judge Berns -- 25 this is Judge Bernstein. We have an issue with the case</p>

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<p>1 against Kuntzman Family, LLC. Are you aware that Ms. 2 Chaitman, who has ostensibly been representing the LLC, 3 wants to withdraw as counsel?</p> <p>4 MS. GATTEGNO: Well, they -- she had been 5 dismissed by my brother-in-law and sister, who were the 6 managing partners in the LLC, and she was asked to withdraw 7 from the case, and they, as far as I know, have no 8 representation.</p> <p>9 THE COURT: Well, that's going to be a problem for 10 the LLC, because an LLC, like a corporation, can't appear 11 unless it's represented by an attorney. And one of the 12 reasons I wanted to speak to you, because Wayne Green -- 13 that's your brother-in-law?</p> <p>14 MS. GATTEGNO: Correct.</p> <p>15 THE COURT: He sent an e-mail saying he has 16 nothing to do with Kuntzman Family, LLC. I haven't heard 17 from your sister, but the problem is, and I wanted to 18 explain to you, that if I grant Ms. Chaitman's motion and 19 Kuntzman, LLC doesn't retain another lawyer, it's 20 substantially likely that I'm going to strike your answer 21 and the Trustee's going to enter judgment. What's the 22 amount the Trustee is seeking?</p> <p>23 MR. CREMONA: Approximately \$672,000, Your Honor.</p> <p>24 THE COURT: Okay. So, the LLC is going to have 25 that judgment against them. Do you understand that?</p>	<p>1 correct?</p> <p>2 MS. CHAITMAN: Yes.</p> <p>3 THE COURT: Mr. Cremona?</p> <p>4 MR. CREMONA: We -- yes, it is, Your Honor.</p> <p>5 THE COURT: Okay. You send it to them, file a 6 certificate of service that the order has been served, and 7 we'll just leave it at that. I can't make them retain 8 lawyers, but as I said, the LLC cannot appear without 9 counsel. Apparently we learned the last go-round that 10 although Ms. Chaitman has been representing the LLC, 11 apparently with their knowledge because she participated in 12 discovery with Ms. Gattegno I think in 2017, Mr. Green 13 claims that she was fired.</p> <p>14 So, it's up to the LLC. They have 60 days. And 15 at the end of 60 days if there's no notice of appearance, 16 you can move -- you can submit an order striking the answer 17 and entering judgment, okay?</p> <p>18 MR. CREMONA: Thank you, Your Honor.</p> <p>19 MS. CHAITMAN: Yes. Will you direct -- will you 20 direct Mr. Cremona --</p> <p>21 THE COURT: All right.</p> <p>22 MS. CHAITMAN: Excuse me, Your Honor.</p> <p>23 THE COURT: Well, I think -- I think he's got the 24 interest in this. Look, you just want to be out of this 25 case.</p>
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<p>1 MS. GATTEGNO: Yes, I do.</p> <p>2 THE COURT: All right. And how long will it take 3 the LLC to retain another lawyer in this matter?</p> <p>4 MS. GATTEGNO: I don't know.</p> <p>5 THE COURT: Is this something you discussed with 6 your brother-in-law and sister? I mean, you haven't had a 7 lawyer for five years.</p> <p>8 MS. GATTEGNO: They do what they choose to, and I 9 have nothing to do with them, and I can't convince them 10 otherwise. I mean, they --</p> <p>11 THE COURT: Okay.</p> <p>12 MS. GATTEGNO: -- if they decide to hire a lawyer, 13 then that's on them.</p> <p>14 THE COURT: All right. Here's what I'm going to 15 do, Mr. Cremona -- or Ms. Chaitman, and I'm going to ask you 16 to settle an order or enter into a consensual order with the 17 Trustee. The order will provide that your motion to 18 withdraw is granted. This matter is stayed for 60 days. In 19 the event that counsel, a new lawyer, has not filed an 20 appearance for Kuntzman Family, LLC within 60 days, you can 21 present a proposed order in let's say seven days' notice 22 striking the answer and entering judgment on the grounds 23 that the LLC is unrepresented, and I want you to send a copy 24 of that proposed order to Ms. Gattegno and to each of the 25 Greens. I understand you have e-mail addresses; is that</p>	<p>1 MS. CHAITMAN: Yeah. I think it would be better 2 if he drafted the order. I agree.</p> <p>3 THE COURT: But your part is simple. You're 4 granted leave to withdraw. But you know, you want to make 5 sure that -- I think, Mr. Cremona, that you have in that 6 order what you need in the event that there's no notice of 7 appearance. And again, I want to make sure that the Greens 8 and Ms. Gattegno understand the consequences. I've 9 explained it to Ms. Gattegno. She's a member. She's the 10 only one who seems to be participating in this matter. All 11 right?</p> <p>12 MR. CREMONA: Understood, Your Honor.</p> <p>13 MS. CHAITMAN: Yes.</p> <p>14 MR. CREMONA: The Trustee with draft the order and 15 serve it as directed.</p> <p>16 THE COURT: Okay. Well, if you can agree -- if 17 you can send it to chambers, if -- you can send Ms. Chaitman 18 consented to the order.</p> <p>19 MR. CREMONA: Understood.</p> <p>20 THE COURT: Okay. Thank you very much. Finally 21 we have --</p> <p>22 MS. CHAITMAN: Thank you.</p> <p>23 THE COURT: Thank you. You're excused, Ms. 24 Chaitman. Finally, we have Picard v. Standard Chartered 25 Financial.</p>

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<p>1 MR. BECKERLEGGE: Yes. Good morning, Your Honor.</p> <p>2 It's Robertson Beckerlegge from Baker & Hostetler for the</p> <p>3 Trustee.</p> <p>4 THE COURT: Good morning.</p> <p>5 MR. FINN: Good morning, Your Honor. Andrew Finn</p> <p>6 from Sullivan & Cromwell on behalf of the Standard Chartered</p> <p>7 defendants.</p> <p>8 THE COURT: Okay. Go ahead, Mr. Finn.</p> <p>9 MR. FINN: Thank you, Your Honor. As the Court is</p> <p>10 aware, this is a subsequent transferee case seeking to</p> <p>11 recover transfers from -- or alleged transfers from</p> <p>12 Fairfield Sentry. The operative complaint was filed in</p> <p>13 2012. It does not allege any absence of good faith under</p> <p>14 any standard and thus fails to state a claim. I don't think</p> <p>15 there's any dispute really about that.</p> <p>16 The Trustee, however, moved to amend his complaint</p> <p>17 in October seeking for the first time in this case to allege</p> <p>18 an absence of good faith by the Standard Chartered</p> <p>19 defendants who did so expressly in an effort to meet the</p> <p>20 willful blindness standard, that as the Court is aware was</p> <p>21 confirmed by Judge Rakoff's good faith decisions in 2011 and</p> <p>22 2014, and which particularly apply in cases like this where</p> <p>23 the initial transferee was a significant net loser in</p> <p>24 Madoff's scheme as Fairfield Sentry was. And so, you know,</p> <p>25 there's a requirement that the Trustee has to allege at</p>	<p>1 faith issue, which is potentially dispositive here, before</p> <p>2 the 2nd Circuit resolves that issue, hopefully once and for</p> <p>3 all. We want the good faith issue here to be decided once</p> <p>4 and we think it should end the case, but in practical terms,</p> <p>5 we think that means waiting for the 2nd Circuit to rule.</p> <p>6 As we've noted in our briefs, Your Honor, the</p> <p>7 Trustee has conceded in other cases where he's sought a stay</p> <p>8 that pending the 2nd Circuit decision that doing so would</p> <p>9 promote judicial efficiency and conserve the parties'</p> <p>10 resources and would not unreasonably prejudice any party.</p> <p>11 And as the Trustee stated in the ABN Amro case in</p> <p>12 seeking a stay before Judge Caproni in the District Court,</p> <p>13 the Trustee said that there's no reason to anticipate any</p> <p>14 undue delay in the 2nd Circuit's decision. Indeed, as I</p> <p>15 mentioned, now that we have a likely week for oral argument,</p> <p>16 I think that's even more true.</p> <p>17 You know, notwithstanding the Trustee's prior</p> <p>18 positions in other cases, the Trustee has argued here that</p> <p>19 we should move forward for two principal reasons. One, he</p> <p>20 argues that his proposed amended complaint meets the willful</p> <p>21 blindness standard in the 2nd Circuit's decision, therefore</p> <p>22 somehow won't matter, and two, he speculates about the idea</p> <p>23 that some evidence could be lost if we wait for the 2nd</p> <p>24 Circuit to decide.</p> <p>25 And if I may, Your Honor, I'm -- I'll address both</p>
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<p>1 least willful blindness to avoid those transfers and recover</p> <p>2 from individual transferees.</p> <p>3 We're asking to hold briefing on the Trustee's</p> <p>4 motion to amend in abeyance pending the 2nd Circuit's</p> <p>5 decision in Citibank and the Legacy cases. We think doing</p> <p>6 so will avoid the need for duplicative litigation on the</p> <p>7 good faith issue, which is clearly going to be at issue and</p> <p>8 is the sole basis for the Trustee's proposed amendments and</p> <p>9 we think could be dispositive in this case.</p> <p>10 As the Court is aware in Citi -- in the Citi and</p> <p>11 Legacy appeals, the Trustee is challenging both Judge</p> <p>12 Rakoff's good faith decisions and this Court's application</p> <p>13 of those rulings in dismissing the Citibank and Legacy</p> <p>14 complaints, arguing that even if Judge Rakoff got it right,</p> <p>15 this Court got it wrong in dismissing the Citibank and</p> <p>16 Legacy complaints.</p> <p>17 My understanding is that those appeals have been</p> <p>18 fully briefed, and I understand that yesterday the 2nd</p> <p>19 Circuit proposed oral argument for the week of March 8th.</p> <p>20 Most of the similarly situated subsequent transferee cases</p> <p>21 involving Fairfield transfers have either been stayed or the</p> <p>22 Trustee has simply not proceeded and apparently is waiting</p> <p>23 for the appeals to be resolved on the good faith issue.</p> <p>24 We don't think it makes sense to spend the</p> <p>25 parties' resources and the Court's time litigating the good</p>	<p>1 of those just briefly. With respect to the complaint, Your</p> <p>2 Honor, as set forth in our briefs, the Trustee simply</p> <p>3 ignores the similarities of this case with Citi and Legacy</p> <p>4 and the other cases -- subsequent transferee cases in</p> <p>5 particular that this Court has dismissed for failure to</p> <p>6 plead the absence of good faith, and he also overstates the</p> <p>7 strengths of the proposed allegations in the -- in the</p> <p>8 proposed complaint here.</p> <p>9 Of course, the Trustee has put forth arguments in</p> <p>10 opposition to the stay as to why the proposed amended</p> <p>11 complaint meets the willful blindness test. We vigorously</p> <p>12 disagree, but that just demonstrates that the sufficiency of</p> <p>13 those allegations are going to be hotly contested here, and</p> <p>14 we'd like that issue to be briefed and decided once by the</p> <p>15 Court, nothing more.</p> <p>16 On the second issue with respect to the potential</p> <p>17 loss of evidence, Your Honor, the Trustee has not put forth</p> <p>18 any real evidence that there's any potential loss of</p> <p>19 anything here other than vague assertions about faded</p> <p>20 memories and just general issues related to the passage of</p> <p>21 time, which is going to affect both parties.</p> <p>22 There's really nothing but speculation. As I</p> <p>23 stated in my declaration, we're retaining information that</p> <p>24 we collected and produced in the Anwar proceedings, which</p> <p>25 were civil cases before Judge Marrero several years ago</p>

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<p>1 involving former clients of Standard Chartered who were -- 2 who were suing the bank.</p> <p>3 And with respect to the alleged issues with 4 discovery in the Anwar proceedings, the transcript excerpt 5 that the -- that the Trustee put forth demonstrates that in 6 fact those issues were addressed fully to the satisfaction 7 of Judge Marrero and then Magistrate Judges Katson and Maas 8 who oversaw discovery there.</p> <p>9 So, for these reasons, Your Honor, we think that - 10 - and all the reasons stated in our brief, we think that a 11 stay is appropriate for the -- for the briefing of the 12 motion to amend.</p> <p>13 With respect to discovery, Your Honor, given that 14 the operative complaint doesn't allege any absence of good 15 faith under any standard, we don't think discovery should 16 proceed.</p> <p>17 The Court in these cases is generally not allowed 18 discovery beyond Rule 2004 pre-complaint discovery until the 19 Trustee has alleged a legally sufficient claim, which he 20 hasn't done here, and the same rule should apply, 21 particularly where here the Trustee had nearly three years 22 before filing the complaint against Standard Chartered to 23 take Rule 2004 discovery.</p> <p>24 On that the -- we received a subpoena back in 25 2009, produced an agreed-to production shortly thereafter,</p>	<p>1 complaint in 2012 and how it does not allege a lack of good 2 faith.</p> <p>3 THE COURT: Yeah, I'm familiar with the timeline 4 and Judge (inaudible) --</p> <p>5 MR. BECKERLEGGE: Okay.</p> <p>6 THE COURT: -- 2014 decision, but the real -- the 7 real question is whether we should just wait to see what the 8 2nd Circuit says, because maybe it promoted judicial 9 economy, and nobody's prejudiced, as you argued successfully 10 in the RBS case. That's really (indiscernible).</p> <p>11 MR. BECKERLEGGE: Well, Your Honor -- well, I 12 would say two things in response to that, Your Honor. One, 13 the second circuit case is not dispositive of this case. 14 This case --</p> <p>15 THE COURT: Well, it may be, though, wouldn't it? 16 In other words, if the 2nd Circuit says Judge Rakoff was 17 wrong, the Trustee doesn't have to plead around an 18 affirmative defense, you probably don't even have to amend 19 your complaint, right?</p> <p>20 MR. BECKERLEGGE: But regardless of that fact, 21 Your Honor, our proposed amended complaint as part of our 22 motion for leave to amend meets that -- meets that standard 23 and any higher standard, so therefore (indiscernible) --</p> <p>24 THE COURT: You say that, but that's a heavily 25 litigated issue and we all know from the past how time-</p>
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<p>1 and it was only in 2012 that this complaint was filed, never 2 alleging any sort of absence of good faith.</p> <p>3 So, Your Honor (indiscernible) --</p> <p>4 THE COURT: Were you -- was Standard Chartered one 5 of the entities that was dismissed under the 6 extraterritoriality decision?</p> <p>7 MR. FINN: Yes, Your Honor. So, that -- we were. 8 Primarily we fell under the comedy portion of that decision, 9 but yes, we were -- we had thought we were dismissed for 10 about two years before --</p> <p>11 THE COURT: Uh-huh.</p> <p>12 MR. FINN: -- coming back.</p> <p>13 THE COURT: Okay. Are you (indiscernible)?</p> <p>14 MR. BECKERLEGGE: (Indiscernible) for the Trustee, 15 Your Honor. There's a few things that I would like to 16 address in response to what Mr. Finn just said. One of them 17 first and foremost has to do with timing. I think they have 18 --</p> <p>19 THE COURT: I'm sorry, with what?</p> <p>20 MR. BECKERLEGGE: The -- with respect to timing, 21 Your Honor.</p> <p>22 THE COURT: Uh-huh.</p> <p>23 MR. BECKERLEGGE: I think that the defendants in 24 Standard Chartered have played a little bit loose with the 25 timeline in this case by talking about the operative</p>	<p>1 consuming that is. You're telling me --</p> <p>2 MR. BECKERLEGGE: I agree --</p> <p>3 THE COURT: -- this is a slam dunk and I can 4 decide it from the bench, and I've looked at it, and I'm not 5 convinced that that's the case. You know, every one of 6 these cases involves a 30 to 40-page decision going through 7 the factual allegations and then the law and then applying 8 the law.</p> <p>9 And if I keep getting it wrong, as you say -- 10 argue in Legacy and Citibank, why not wait for the 2nd 11 Circuit to tell me so, so I don't get it wrong again?</p> <p>12 MR. BECKERLEGGE: I agree, Your Honor, that it is 13 a time-consuming process -- excuse me -- and that is 14 actually one of the reasons why it is prejudicial to the 15 Trustee. What defendants have written in their papers is 16 actually -- if you read it closely is actually a signal to 17 where this is likely to go. This is not merely just a stay 18 about the results of the 2nd Circuit appeal, Your Honor. 19 What they do in their papers is they signal that this is 20 likely the first tip of the stay iceberg as they try to kick 21 this case as far down the road as possible, because not only 22 is there --</p> <p>23 THE WITNESS: What does that mean?</p> <p>24 MR. BECKERLEGGE: -- the possibility of appeals 25 from the second (indiscernible) reconsideration or a</p>

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<p>1 petition to the Supreme Court, they've also raised issues in</p> <p>2 their papers about, you know, omnibus briefing or related</p> <p>3 subsequent cases or things that require additional further</p> <p>4 coordination, and they also call into question the whole</p> <p>5 structure and timeline of the Fairfield case, which as Your</p> <p>6 Honor knows has been sent over to Judge Morris.</p> <p>7 So, it's entirely possible that this is just the</p> <p>8 beginning of the stays that they will seek. And as the time</p> <p>9 passes, that only continues to prejudice the Trustee. And</p> <p>10 so, in this -- you know, this case is ready to move forward</p> <p>11 at this time, and while, yes, you have -- as I have said,</p> <p>12 that this is -- we believe we meet whatever the standard may</p> <p>13 be, and you have said that that is a heavily litigated</p> <p>14 position, I completely understand that, Your Honor, but what</p> <p>15 I would say to that is Standard Chartered could have headed</p> <p>16 this off now. They could have consented to our proposed</p> <p>17 amended complaint and moved to dismiss. They could have</p> <p>18 opposed our motion for leave to amend. If they are so</p> <p>19 bullish on their claims and so dismissive of the Trustee's</p> <p>20 position -- actually, Your Honor, the most judicially</p> <p>21 efficient thing would have been for them to either consent</p> <p>22 and move or oppose the motion for leave to amend.</p> <p>23 THE COURT: Consenting and moving is no different</p> <p>24 from opposing the amendment on the grounds of lack of</p> <p>25 futility. That's just more motion practice that may be</p>	<p>1 different standard. I mean, you know --</p> <p>2 MR. BECKERLEGGE: I -- and --</p> <p>3 THE COURT: -- unfortunately, these issues were</p> <p>4 not decided six years ago by the Circuit, but --</p> <p>5 MR. BECKERLEGGE: I understand, Your Honor. If I</p> <p>6 could --</p> <p>7 THE COURT: And we've all -- we've all done a lot</p> <p>8 of work, but you know, the Circuit has now scheduled</p> <p>9 argument, I understand, for the week of March 8th.</p> <p>10 MR. BECKERLEGGE: (Indiscernible) --</p> <p>11 THE COURT: You know, getting to the -- all right,</p> <p>12 well, that's what I'm being told. I checked yesterday. I</p> <p>13 didn't see an argument date, but you know, that's what I'm</p> <p>14 being told</p> <p>15 MR. BECKERLEGGE: With respect to -- with respect</p> <p>16 to discovery, Your Honor, you know, the -- one of the things</p> <p>17 that Standard Chartered has to do is demonstrate that the</p> <p>18 Trustee's case completely lacks merit. That's a key</p> <p>19 component to any of this, and one of the things they really</p> <p>20 have not done in their papers is indicated in any way that</p> <p>21 the Trustee's case lacks merit. While they say it in</p> <p>22 conclusory statements --</p> <p>23 THE COURT: But I've looked -- I looked at your</p> <p>24 complaint, the original complaint, which was the only</p> <p>25 pending complaint, and you know, if -- obviously you haven't</p>
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<p>1 unnecessary. I don't see what that does.</p> <p>2 MR. FINN: Your Honor, may I just address a couple</p> <p>3 of points?</p> <p>4 THE COURT: Well, let him finish, thought, Mr.</p> <p>5 Finn.</p> <p>6 MR. FINN: Okay. Thank you.</p> <p>7 MR. BECKERLEGGE: Your Honor, you know --</p> <p>8 THE COURT: That doesn't make -- yeah, that</p> <p>9 doesn't make a lot of sense, Mr. Beckerlegge.</p> <p>10 MR. BECKERLEGGE: Well, if they are so bullish on</p> <p>11 their claims, they obviously could have moved at this point.</p> <p>12 They didn't have to seek a stay, because I think the stay is</p> <p>13 just the beginning of a number of stays that they will</p> <p>14 attempt to seek in order to move this case down the road as</p> <p>15 far as they possibly can.</p> <p>16 THE COURT: It sounds like you're speculating</p> <p>17 about things in the future which can be addressed in the</p> <p>18 future. The bottom line is that if the 2nd Circuit reverses</p> <p>19 on the pleading around the affirmative defenses, basically</p> <p>20 all these challenges are over and you probably don't have to</p> <p>21 amend your complaint.</p> <p>22 If the 2nd Circuit -- if the 2nd Circuit says,</p> <p>23 well, yeah, Judge Rakoff got the pleading burden right but</p> <p>24 it's objective rather than subjective, all those cases are</p> <p>25 probably going to be remanded to me to consider under the</p>	<p>1 pled any knowledge on the part of Standard Chartered, right?</p> <p>2 MR. BECKERLEGGE: In the 2012 complaint?</p> <p>3 THE COURT: Which under the current -- which under</p> <p>4 the current rules you have to do.</p> <p>5 MR. BECKERLEGGE: Right, which we did in our</p> <p>6 proposed amended complaint. That is correct, Your Honor.</p> <p>7 THE COURT: Yeah, I understand. That's why you</p> <p>8 (indiscernible) amended complaint, but it may not be</p> <p>9 necessary to --</p> <p>10 MR. BECKERLEGGE: Right.</p> <p>11 THE COURT: -- amend the complaint depending on</p> <p>12 what the 2nd Circuit decides or engage in all this</p> <p>13 litigation.</p> <p>14 MR. BECKERLEGGE: At the very least, Your Honor,</p> <p>15 there is no burden on Standard Chartered to proceed with the</p> <p>16 limited discovery that we proposed in our letter to them --</p> <p>17 THE COURT: What are you -- what are you seeking?</p> <p>18 And you know --</p> <p>19 MR. BECKERLEGGE: Going back to --</p> <p>20 THE COURT: By the way, nobody's raised it. I</p> <p>21 don't know how you take a 2004 exam and append the adversary</p> <p>22 proceeding, but what are you seeking?</p> <p>23 MR. BECKERLEGGE: Your Honor, we're seeking</p> <p>24 documents that were produced by Standard Chartered in the</p> <p>25 Anwar litigation. Going back, we had long-running</p>

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<p>1 negotiations with Standard Chartered back in 2015 and 2016</p> <p>2 where we went back and forth about the production of</p> <p>3 documents, and --</p> <p>4 THE COURT: If you get that discovery, are you</p> <p>5 then going to try and bolster your amended complaint by</p> <p>6 adding facts you learned in discovery? Because that sounds</p> <p>7 like pre -- you know, pre-adversary --</p> <p>8 MR. BECKERLEGGE: We are not trying --</p> <p>9 THE COURT: -- proceeding discovery.</p> <p>10 MR. BECKERLEGGE: If anything, that would be</p> <p>11 discovery that would aid us in -- it would be an aid of</p> <p>12 trial. You know, Standard Chartered had at the ready to</p> <p>13 produce documents to us on a, quote, "expedited basis," and</p> <p>14 they were going to produce documents concerning Madoff,</p> <p>15 concerning Standard Chartered's review, analysis, due</p> <p>16 diligence, evaluation, approval, and ongoing monitoring of</p> <p>17 the Fairfield funds, certain fees paid to Standard Chartered</p> <p>18 in connection with the investments, and sales and marketing</p> <p>19 materials used with respect to the Fairfield funds.</p> <p>20 And those documents were encompassed, they were</p> <p>21 reviewed, they were produced, and they were relevant in</p> <p>22 Anwar, and those categories of documents are directly</p> <p>23 relevant here, Your Honor.</p> <p>24 You know, we've waited a very long time to try to</p> <p>25 move this case forward and continue, and the inability to do</p>	<p>1 the Trustee to take some depositions. The only way to</p> <p>2 answer that question would be --</p> <p>3 THE COURT: But that sounds -- so, it sounds like</p> <p>4 the answer to my question is yes. You're hopeful it won't</p> <p>5 be the case, but similarly, the production of documents --</p> <p>6 MR. BECKERLEGGE: I can --</p> <p>7 THE COURT: -- or transcripts would trigger the</p> <p>8 desire to take depositions --</p> <p>9 MR. BECKERLEGGE: I can --</p> <p>10 THE COURT: -- because certain questions relative</p> <p>11 to this case may not have been answered (indiscernible).</p> <p>12 MR. BECKERLEGGE: That's entirely right, Your</p> <p>13 Honor. I cannot foreclose that possibility. That would --</p> <p>14 that would be detrimental --</p> <p>15 THE COURT: Uh-huh. I got it.</p> <p>16 MR. BECKERLEGGE: -- to the Trustee.</p> <p>17 THE COURT: All right. All right.</p> <p>18 MR. FINN: Your Honor --</p> <p>19 THE COURT: Let me give a chance to Mr. Finn to</p> <p>20 respond.</p> <p>21 MR. FINN: Thank you, Your Honor. First of all,</p> <p>22 on the points about -- or point about, you know,</p> <p>23 coordinating with other cases, my point in mentioning those</p> <p>24 in our briefing is that a stay here would not, you know,</p> <p>25 completely delay progress of important issues here,</p>
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<p>1 that is prejudicial to the Trustee, and it's not just</p> <p>2 speculative, and I appreciate what Mr. Finn is saying about</p> <p>3 those documents have all been retained, but again, the focus</p> <p>4 has to be on the burden. There is no burden here to</p> <p>5 Standard Chartered to produce those documents as he -- as</p> <p>6 was written four years ago. Those documents have been</p> <p>7 reviewed and produced.</p> <p>8 And more importantly, if there's any transcripts,</p> <p>9 because again we sought transcripts related to that</p> <p>10 litigation, Trustee is happy to pay for the production of</p> <p>11 those transcripts. One of our concerns is the fact --</p> <p>12 THE COURT: Dep -- are those deposition</p> <p>13 transcripts or court transcripts?</p> <p>14 MR. BECKERLEGGE: Deposition, Your Honor. And so,</p> <p>15 one of the things we're concerned about is there may be</p> <p>16 witnesses of which we are not aware this document -- these -</p> <p>17 - this production and these transcripts would aid us with.</p> <p>18 Also, discovery is likely to be complex and time-consuming,</p> <p>19 and it's -- it would be prejudicial if we would not start</p> <p>20 that now.</p> <p>21 THE COURT: Are you saying that after you get the</p> <p>22 paper discovery or document discovery, you're then going to</p> <p>23 want to take depositions while all of this is pending?</p> <p>24 MR. BECKERLEGGE: It's entirely possible that the</p> <p>25 production of those transcripts would eliminate the need for</p>	<p>1 particularly the fact that the Fairfield case is going</p> <p>2 forward. It means the progress can be made there, and of</p> <p>3 course, the allegations in that complaint that are going to</p> <p>4 be subject to a motion to dismiss before Chief Judge Morris</p> <p>5 are expressly incorporated by reference in the proposed</p> <p>6 amended complaint here. That was only -- that was my point</p> <p>7 in noting that. That case is proceeding, so that will also</p> <p>8 potentially provide the parties guidance here if --</p> <p>9 depending on the timing.</p> <p>10 On the -- on the idea of omnibus briefing, you</p> <p>11 know, right now we don't know. The Trustee's counsel has</p> <p>12 represented that they are going to amend -- seek to amend an</p> <p>13 - what I was told is about a dozen of similar -- these</p> <p>14 similarly situated cases. I believe they've done that in</p> <p>15 one other case so far, but you know, if the Trustee is going</p> <p>16 to do that, you know, there's nothing stopping the Trustee</p> <p>17 from proposing amended complaints and the defendants in</p> <p>18 those cases can see if there's any common issues. That was</p> <p>19 my only point that we -- you know, we don't have to</p> <p>20 completely, you know, lose this time in these related cases.</p> <p>21 On discovery, I think I need to clarify how prior</p> <p>22 discussions unfolded. As I mentioned, the Trustee sent a</p> <p>23 Rule 2004 subpoena to Standard Chartered in 2009. We had</p> <p>24 negotiations with the -- with the Trustee's counsel shortly</p> <p>25 thereafter and within I believe a month or two produced</p>

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<p>1 documents. We didn't hear from the Trustee until the</p> <p>2 complaint was filed. Three years after the complaint was</p> <p>3 filed in 2015, the Trustee's counsel came to us while the</p> <p>4 extraterritoriality motion was pending, and said we think</p> <p>5 your Rule 2004 subpoena production was insufficient.</p> <p>6 And after several negotiations, rather than coming</p> <p>7 to the Court in the midst of the motion to dismiss on</p> <p>8 extraterritoriality grounds, we engaged in, you know, good</p> <p>9 faith meet-and-confers with the Trustee's counsel in 2015</p> <p>10 and 2016.</p> <p>11 In that context, and as set forth -- I believe</p> <p>12 it's Exhibit D to Mr. Foreman's declaration and opposition</p> <p>13 of our motion -- I set --</p> <p>14 THE COURT: Correct.</p> <p>15 MR. FINN: -- forth in 2016, provided the</p> <p>16 Trustee's counsel with details about what we thought in the</p> <p>17 Anwar discovery might be -- might be responsive to what we</p> <p>18 expected the Trustee's request might be, and in order to,</p> <p>19 you know, move the ball along a little bit while we were</p> <p>20 waiting for the decision on extraterritoriality.</p> <p>21 Now, we never -- I made it very clear to Mr.</p> <p>22 Foreman at the time that we could not flip a switch and</p> <p>23 produce these materials. What we did is we went back in our</p> <p>24 -- in our meet-and-confer context and looked at categories</p> <p>25 that we knew we collected, we knew we produced, but of</p>	<p>1 to come back, you know, eight years later and say now we</p> <p>2 have to do discovery when we haven't even had a chance to,</p> <p>3 you know, litigate the sufficiency of a proposed amended</p> <p>4 complaint that for the first time alleges the absence of bad</p> <p>5 faith, you know, we think is completely unfair to Standard</p> <p>6 Chartered.</p> <p>7 In addition, we do anticipate making, you know,</p> <p>8 additional arguments in opposition to the amendment,</p> <p>9 particularly with respect to timing of the amendment,</p> <p>10 notwithstanding all the proceedings --</p> <p>11 THE COURT: Uh-huh.</p> <p>12 MR. FINN: -- that went on. We think based on the</p> <p>13 timing of the complaint, the Trustee could have and should</p> <p>14 have alleged if he had a theory back in 2012 the absence of</p> <p>15 good faith, you know, from the (indiscernible) --</p> <p>16 THE COURT: Well, he didn't have to do that until</p> <p>17 2014, right?</p> <p>18 MR. FINN: Well, Your Honor, as I mentioned, 2011</p> <p>19 was the Katz case, which did set out in the context of</p> <p>20 548(c) the good faith standard (inaudible) requiring at</p> <p>21 least willful blindness. Now, it is true that it wasn't</p> <p>22 until 2014 because the Trustee continued to pursue cases</p> <p>23 against subsequent transferees and others notwithstanding</p> <p>24 the Katz decision that Judge Rakoff had to further elaborate</p> <p>25 and make it very clear that that applied with respect to</p>
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<p>1 course the discovery in Anwar was not the same. There were</p> <p>2 different issues, different discovery requests, and we do</p> <p>3 not have these categories in, you know, a nice little</p> <p>4 package that we can press send over to the Trustee's counsel</p> <p>5 and --</p> <p>6 THE COURT: Can I ask a question, though? Let me</p> <p>7 just -- I just want to interrupt.</p> <p>8 MR. FINN: (Indiscernible).</p> <p>9 THE COURT: Inevitably good faith is going to be</p> <p>10 an issue in the case, whether the Trustee has to disprove it</p> <p>11 or you have to prove it, assuming that the Trustee is able</p> <p>12 to amend the complaint after the 2nd Circuit clarifies the</p> <p>13 standard. So, why not produce, you know, the information</p> <p>14 relating to Standard Chartered's good faith?</p> <p>15 MR. FINN: Your Honor, a couple reasons. First,</p> <p>16 we don't think that it's appropriate for Standard Chartered</p> <p>17 to have to bear additional costs after the Trustee had a</p> <p>18 full opportunity to pursue Rule 2004 discovery and decided</p> <p>19 not to before filing the complaint and could have done so on</p> <p>20 the good faith issue.</p> <p>21 Keep in mind, Your Honor, that this case was</p> <p>22 actually filed after the Katz decision where Judge Rakoff</p> <p>23 first explained or set forth the willful blindness standard.</p> <p>24 It wasn't a secret that good faith was going to be an issue,</p> <p>25 and the Trustee decided to not pursue discovery then. And</p>	<p>1 550(b), and that also required an affirmative duty to plead.</p> <p>2 But my point is, Your Honor, that the Trustee was</p> <p>3 alleging at the time, against others, the absence of good</p> <p>4 faith. The complaint here relies primarily on the</p> <p>5 production we provided in 2009 in addition to allegations</p> <p>6 which were cut and paste from plaintiff's lawyer's</p> <p>7 submissions back in 2012, in 2013 in the Anwar case, so</p> <p>8 nothing here is really new.</p> <p>9 In addition to the timing point, Your Honor, we</p> <p>10 have what we think are independent grounds for dismissal</p> <p>11 based on the fact that the allegations here don't plausibly</p> <p>12 allege that any Standard Chartered defendant was actually a</p> <p>13 transferee of the funds sought to be recovered. And the</p> <p>14 proposed amended complaint does not plausibly allege that</p> <p>15 any of the funds received by SBC supposedly were traceable</p> <p>16 through initial transfers.</p> <p>17 THE COURT: Uh-huh.</p> <p>18 MR. FINN: The proposed amended complaint I think</p> <p>19 bears this out. The proposed amended complaint suggests</p> <p>20 that by the time of the two-year transfers here, Standard</p> <p>21 Chartered wasn't purchasing any shares of Fairfield on its</p> <p>22 own behalf. It was actually its clients who were investing</p> <p>23 in the fund and the bank was facilitating that, and you</p> <p>24 know, as alleged, recommending the fund to its clients.</p> <p>25 But you know, that really disproves any sort of</p>

<p style="text-align: right;">Page 46</p> <p>1 actual transferee status of any of the named Standard 2 Chartered defendants. So, we think it would be, you know, 3 highly unfair to go forward on discovery, and the discovery 4 being good faith, which of course the Trustee could have 5 asked for documents back in 20 -- 2009 when we were -- and 6 2010 or 2011 when we were actually in the midst of Anwar 7 discovery, and you know, we could have addressed that at 8 that time.</p> <p>9 So, you know, we --</p> <p>10 THE COURT: Did you -- did your client answer in 11 this case or it's just not occurred yet?</p> <p>12 MR. FINN: That hasn't occurred yet, Your Honor.</p> <p>13 THE COURT: Okay. All right. Is there anything 14 else?</p> <p>15 MR. BECKERLEGGE: Your Honor, Rob Beckerlegge 16 again if I may. Just with respect to some of the things 17 that Mr. Finn just said on discovery, in terms of costs, you 18 know, it seems that this is sort of a made-up excuse. The 19 transcripts from (indiscernible) --</p> <p>20 THE COURT: You think -- you think it's going to 21 be free -- you think it's going to be free to do this?</p> <p>22 MR. BECKERLEGGE: No, I'm not saying that it's 23 going to be free, Your Honor. I think the Trustee's --</p> <p>24 THE COURT: Okay.</p> <p>25 MR. BECKERLEGGE: -- willing to pay for production</p>	<p style="text-align: right;">Page 48</p> <p>1 moved for a stay of its own appeal and the District Court 2 granted it. The Court has, quote, "brought discretion to 3 stay civil proceedings as an incident to its power to 4 control its own docket," close quote, Clinton v. Jones, 520 5 U.S. 681 at page 706 (1997).</p> <p>6 Courts have considered five factors in determining 7 whether to grant a stay in a civil action. They are the 8 private interests of the plaintiffs in proceeding 9 expeditiously as balanced against the prejudice to the 10 plaintiffs if delayed, the private interests of and burden 11 on the defendants in the interests of the Court, the 12 interests of persons not parties to the civil litigation, 13 and the public interest.</p> <p>14 Stays and civil actions, open quote, "Are 15 particularly appropriate where they promote judicial 16 economy, avoidance of confusion, and possible inconsistent 17 results," close quote, Louis Berger Group, Inc., v. State 18 Bank of India, 802 F.Supp 2d 482, 490 (S.D.N.Y. 2011), and 19 courts in this circuit often stay proceedings when a higher 20 court is close to settling an important issue of law bearing 21 on the action, e.g. Sikhs For Justice v. Nath, 893 F.Supp 2d 22 598, 622 (S.D.N.Y. 2012).</p> <p>23 The motion to amend should be stayed because the 24 2nd Circuit's decision in related appeals, to wit the 25 Citibank and Legacy appeals, will bind the Court as to those</p>
<p style="text-align: right;">Page 47</p> <p>1 of any transcripts. And with respect to the documents, you 2 know, they were able to -- they've already been reviewed and 3 produced in another case and are thus -- and they were able 4 to be produced at the time we were having these discussions 5 on a quote, "expedited," basis.</p> <p>6 Those are their words, not ours. So, I don't 7 think there are a tremendous amount of costs associated with 8 that. And there's simply no reason not to produce the 9 documents as they have a -- as they bear on Standard 10 Charter's. I think Your Honor asked that question at the 11 outset, and I think that is a very reasonable question and 12 it's also -- there's no reason not to produce those 13 documents at this time.</p> <p>14 THE COURT: Well, unless you're denied a motion to 15 amend, either before or after the 2nd Circuit rules, then 16 you have no complaint. Because the first complaint, the 17 original complaint, is clearly insufficient under the 18 existing rules, right?</p> <p>19 MR. BECKERLEGGE: Under the -- under -- given the 20 pending rules, yes, but hence the reason for our motion in 21 the first place (indiscernible) to amend.</p> <p>22 THE COURT: Okay. I got it. Look, I'm going to 23 grant the motion, and what I'm about to say may sound 24 familiar because a lot of it is taken from the brief that 25 the Trustee filed in the RBS case, in which the Trustee</p>	<p style="text-align: right;">Page 49</p> <p>1 controlling issues of law, specifically the Trustee's 2 pleading burden and the subjective versus objective standard 3 of knowledge, and forestall the need for this Court to 4 needlessly expend judicial resources addressing them.</p> <p>5 The briefing in the Second Circuit on those cases 6 is complete and I'm advised that oral argument has been set 7 for the week of March 8, 2021. Thus, granting the stay 8 would not only promote judicial economy but also would 9 reduce the risk of inconsistent rulings thereby fostering 10 the orderly administration of justice and minimizing the 11 risk of having to revisit this Court's decision on 12 reconsideration of further appeal.</p> <p>13 The Trustee has a strong interest in this stay 14 because absent one he would have to needlessly expend 15 resources on simultaneous litigation of identical 16 controlling questions of law in the 2nd Circuit and this 17 Court. And as the defendant is the movant herein, it's not 18 claiming prejudice.</p> <p>19 Finally, a stay of the -- of the motion serves the 20 best interest of the non-parties and the public by 21 conserving judicial resources and avoiding the possibility 22 of conflicting decisions. A stay will serve not only the 23 interests of the Court and the parties but also the 24 interests of non-parties and the public in the orderly and 25 efficient of judicial resources. See Albert v. Blue Diamond</p>

<p style="text-align: right;">Page 50</p> <p>1 Growers, 232 F.Supp 3d 509, 513 (S.D.N.Y. 2017).</p> <p>2 I will also stay discovery. I'm not convinced</p> <p>3 that the costs are minimal or that Standard Chartered should</p> <p>4 be forced to bear them at this point, particularly depending</p> <p>5 on the 2nd Circuit's decision, and if it upholds the</p> <p>6 pleading standards, it may be that the Trustee's case will</p> <p>7 never proceed any further.</p> <p>8 In addition, as I mentioned during the argument,</p> <p>9 I'm a little concerned that this is analogous to pre-</p> <p>10 complaint discovery where the Trustee will get discovery on</p> <p>11 the good faith issue and then conceivably move to amend its</p> <p>12 complaint, particularly if I deny the motion to amend under</p> <p>13 the existing standards and those standards remain.</p> <p>14 So, for those reasons, the motion to stay is</p> <p>15 granted. The motion to stay discovery is granted. As I</p> <p>16 mentioned earlier, I'm not sure you can use Rule 2004 in</p> <p>17 this situation anyway, but the parties haven't raised it, so</p> <p>18 I'm not ruling on it. And Mr. Finn, you can submit an -- a</p> <p>19 plain, vanilla order. Thank you very much.</p> <p>20 MR. FINN: Thank you, Your Honor.</p> <p>21 THE COURT: Thank you.</p> <p>22</p> <p>23 (Whereupon these proceedings were concluded at</p> <p>24 10:58 AM)</p> <p>25</p>	<p style="text-align: right;">Page 52</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, Sonya Ledanski Hyde, certified that the foregoing</p> <p>4 transcript is a true and accurate record of the proceedings.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Sonya Ledanski Hyde</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Veritext Legal Solutions</p> <p>21 330 Old Country Road</p> <p>22 Suite 300</p> <p>23 Mineola, NY 11501</p> <p>24</p> <p>25 Date: December 17, 2020</p>
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